

245A.13 INVOLUNTARY RECEIVERSHIP FOR RESIDENTIAL PROGRAMS.

Subdivision 1. **Application.** In addition to any other remedy provided by law, the commissioner may petition the district court in Ramsey County for an order directing the controlling individuals of the residential program to show cause why the commissioner should not be appointed receiver to operate the residential program. The petition to the district court must contain proof by affidavit: (1) that the commissioner has either begun license suspension or revocation proceedings, suspended or revoked a license, or has decided to deny an application for licensure of the residential program; or (2) it appears to the commissioner that the health, safety, or rights of the residents may be in jeopardy because of the manner in which the residential program may close, the residential program's financial condition, or violations committed by the residential program of federal or state laws or rules. If the license holder, applicant, or controlling individual operates more than one residential program, the commissioner's petition must specify and be limited to the residential program for which it seeks receivership. The affidavit submitted by the commissioner must set forth alternatives to receivership that have been considered, including rate adjustments. The order to show cause is returnable not less than five days after service is completed and must provide for personal service of a copy to the residential program administrator and to the persons designated as agents by the controlling individuals to accept service on their behalf.

Subd. 2. **Appointment of receiver.** If the court finds that involuntary receivership is necessary as a means of protecting the health, safety, or rights of persons being served by the residential program, the court shall appoint the commissioner as receiver to operate the residential program. The commissioner as receiver may contract with another entity or group to act as the managing agent during the receivership period. The managing agent will be responsible for the day-to-day operations of the residential program subject at all times to the review and approval of the commissioner.

Subd. 3. **Powers and duties of the receiver.** Within 36 months after the receivership order, the receiver shall provide for the orderly transfer of the persons served by the residential program to other residential programs or make other provisions to protect their health, safety, and rights. The receiver or the managing agent shall correct or eliminate deficiencies in the residential program that the commissioner determines endanger the health, safety, or welfare of the persons being served by the residential program unless the correction or elimination of deficiencies involves major alteration in the structure of the physical plant. If the correction or elimination of the deficiencies requires major alterations in the structure of the physical plant, the receiver shall take actions designed to result in the immediate transfer of persons served by the residential program. During the period of the receivership, the receiver and the managing agent shall operate the residential program in a manner designed to preserve the health, safety, rights, adequate care, and supervision of the persons served by the residential program. The receiver or the managing agent may make contracts and incur lawful expenses. The receiver or the managing agent shall collect incoming payments from all sources and apply them to the cost incurred in the performance of the functions of the receivership including the fee set under subdivision 4. No security interest in any real or personal property comprising the residential program or contained within it, or in any fixture of the physical plant, shall be impaired or diminished in priority by the receiver or the managing agent.

Subd. 3a. **Liability.** The provisions contained in section 245A.12, subdivision 6, shall also apply to receiverships ordered according to this section.

Subd. 3b. **Liability for financial obligations.** The provisions contained in section 245A.12, subdivision 7, also apply to receiverships ordered according to this section.

Subd. 3c. **Physical plant of the residential program.** Occupation of the physical plant under an involuntary receivership shall be governed by paragraphs (a) and (b).

(a) The physical plant owned by a controlling individual of the residential program or related party must be made available for the use of the residential program throughout the receivership period. The court shall determine a fair monthly rental for the physical plant, taking into account all relevant factors necessary to meet required arm's-length obligations of controlling individuals such as mortgage payments, real estate taxes, and special assessments. The rental fee must be paid by the receiver to the appropriate controlling individuals or related parties for each month that the receivership remains in effect. No payment made to a controlling individual or related party by the receiver or the managing agent or any state agency during a period of the receivership shall include any allowance for profit or be based on any formula that includes an allowance for profit.

(b) If the owner of the physical plant of a residential program is not a related party, the court shall order the controlling individual to continue as the lessee of the property during the receivership period. Rental payments during the receivership period shall be made to the owner of the physical plant by the commissioner or the managing agent on behalf of the controlling individual.

Subd. 4. **Fee.** A receiver appointed under an involuntary receivership or the managing agent is entitled to a reasonable fee as determined by the court.

Subd. 5. **Termination.** An involuntary receivership terminates 36 months after the date on which it was ordered or at any other time designated by the court or when any of the following events occurs:

- (1) the commissioner determines that the residential program's license application should be granted or should not be suspended or revoked;
- (2) a new license is granted to the residential program;
- (3) the commissioner determines that all persons residing in the residential program have been provided with alternative residential programs; or
- (4) the residential program closes.

Subd. 6. **Emergency procedure.** If it appears from the petition filed under subdivision 1, from an affidavit or affidavits filed with the petition, or from testimony of witnesses under oath if the court determines it necessary, that there is probable cause to believe that an emergency exists in a residential program, the court shall issue a temporary order for appointment of a receiver within five days after receipt of the petition. Notice of the petition must be served on the residential program administrator and on the persons designated as agents by the controlling individuals to accept service on their behalf. A hearing on the petition must be held within five days after notice is served unless the administrator or designated agent consents to a later date. After the hearing, the court may continue, modify, or terminate the temporary order.

Subd. 7. **Rate recommendation.** The commissioner of human services may review rates of a residential program participating in the medical assistance program which is in receivership and that has needs or deficiencies documented by the Department of Health or the Department of Human Services. If the commissioner of human services determines that a review of the rate established under sections 256B.5012 and 256B.5013 is needed, the commissioner shall:

(1) review the order or determination that cites the deficiencies or needs; and

(2) determine the need for additional staff, additional annual hours by type of employee, and additional consultants, services, supplies, equipment, repairs, or capital assets necessary to satisfy the needs or deficiencies.

Subd. 8. Adjustment to the rate. Upon review of rates under subdivision 7, the commissioner may adjust the residential program's payment rate. The commissioner shall review the circumstances, together with the residential program's most recent income and expense report, to determine whether or not the deficiencies or needs can be corrected or met by reallocating residential program staff, costs, revenues, or any other resources including investments. If the commissioner determines that any deficiency cannot be corrected or the need cannot be met with the payment rate currently being paid, the commissioner shall determine the payment rate adjustment by dividing the additional annual costs established during the commissioner's review by the residential program's actual resident days from the most recent income and expense report or the estimated resident days in the projected receivership period. The payment rate adjustment remains in effect during the period of the receivership or until another date set by the commissioner. Upon the subsequent sale, closure, or transfer of the residential program, the commissioner may recover amounts that were paid as payment rate adjustments under this subdivision. This recovery shall be determined through a review of actual costs and resident days in the receivership period. The costs the commissioner finds to be allowable shall be divided by the actual resident days for the receivership period. This rate shall be compared to the rate paid throughout the receivership period, with the difference multiplied by resident days, being the amount to be repaid to the commissioner. Allowable costs shall be determined by the commissioner as those ordinary, necessary, and related to resident care by prudent and cost-conscious management. The buyer or transferee shall repay this amount to the commissioner within 60 days after the commissioner notifies the buyer or transferee of the obligation to repay. This provision does not limit the liability of the seller to the commissioner pursuant to section 256B.0641.

Subd. 9. Receivership accounting. The commissioner may use the medical assistance account and funds for receivership cash flow and accounting purposes.

Subd. 10. Receivership costs. The commissioner may use the accounts and funds that would have been available for the room and board, services, and program costs of persons in the residential program for costs, cash flow, and accounting purposes related to the receivership.

Subd. 11. Controlling individuals; restrictions on licensure. No controlling individual of a residential program placed into receivership under this section may apply for or receive a license to operate a residential program for five years from the commencement of the receivership period. This subdivision does not apply to residential programs that are owned or operated by controlling individuals that were in existence before the date of the receivership agreement, and that have not been placed into receivership.

History: 1987 c 333 s 14; 1988 c 411 s 7; 1989 c 282 art 2 s 83; 1990 c 568 art 2 s 49; 1992 c 513 art 9 s 15; 1994 c 434 s 5-7; 1Sp2001 c 9 art 3 s 1,2; 2002 c 379 art 1 s 113